

Requested by Senator Greg Lind

For the Senate Natural Resources and Energy Committee

Prepared by Todd Everts

March 29, 2007 (3:08pm)

1. Title, line 6.

Following: "AUTHORITY;"**Insert:** "ALLOWING THE CONSUMER COUNSEL TO PARTICIPATE IN CERTAIN
AUTHORITY PROCEEDINGS;"

2. Title, line 10.

Following: "AUTHORITY"**Insert:** "TRANSMISSION AND DISTRIBUTION"**Following:** "PURPOSES;"**Insert:** "CLASSIFYING AUTHORITY ELECTRICAL GENERATION FACILITY
PROPERTY AS CLASS THIRTEEN PROPERTY FOR PROPERTY TAX
PURPOSES; CLASSIFYING AUTHORITY WIND GENERATION FACILITY
PROPERTY AS CLASS FOURTEEN PROPERTY FOR PROPERTY TAX
PURPOSES;"

3. Title, line 13.

Following: "APPROPRIATIONS;"**Insert:** "CLARIFYING THAT THE PROVISIONS OF THE TERRITORIAL
INTEGRITY ACT APPLY TO THE AUTHORITY;"**Following:** "15-6-141,"**Insert:** "15-6-156, 15-6-157,"**Following:** "15-24-1203,"**Strike:** "AND"**Insert:** "18-2-101,"**Following:** "18-4-313,"**Insert:** "69-5-101, AND 69-8-103,"

4. Page 3, line 22.

Following: "7]"**Insert:** "and subsection (3) of this section"

5. Page 5, line 21.

Insert: "(3) The authority may not exercise the power of eminent
domain pursuant to Title 70, chapter 30, to acquire property
other than for rights-of-way for gas pipelines and electric
power lines."

6. Page 5, line 24.

Following: "in"

Strike: "[section 7]"

Insert: "[sections 5(3) and 7]"

7. Page 6, line 29.

Following: "authority"

Insert: "-- consumer counsel participation"

8. Page 6, line 29 through page 7, line 1.

Strike: subsection (1) in its entirety

Renumber: subsequent subsection

9. Page 7, line 5 through line 6.

Strike: "of" on line 5 through "ownership" on line 6

Insert: "is in the public interest"

10. Page 7, line 7.

Insert: "(2) The consumer counsel may participate in authority proceedings that establish customer rates and services related to electricity or natural gas generation, transmission, and distribution."

11. Page 14, line 7.

Insert: "Section 24. Section 15-6-156, MCA, is amended to read:

"15-6-156. Class thirteen property -- description -- taxable percentage. (1) Except as provided in subsections (2) (a) through (2) (g), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities classified under 15-6-157, owned or operated by any electrical energy producer;

(d) noncentrally assessed electrical generation facilities, except wind generation facilities classified under 15-6-157, owned or operated by the Montana electric and gas authority provided for in [section 3]; and

~~(d)~~(e) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under

15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

{ Internal References to 15-6-156:

15-6-141x 15-6-141x} "

Insert: "Section 25. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property -- description -- taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;

(e) wind generation facilities owned or operated by the Montana electric and gas authority provided for in [section 3].

(2) Class fourteen property does not include wind generation facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(3) For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(4) Class fourteen property is taxed at 3% of its market value."

{ Internal References to 15-6-157:

15-6-137 x 15-6-141 x 15-6-141x 15-6-156x
15-6-156x 15-6-156 x 15-6-156x }"

Renumber: subsequent sections

12. Page 14, line 11.

Following: "15-6-141"

Insert: ", 15-6-156, 15-6-157,"

13. Page 18, line 21.

Insert: "**Section 26.** Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation; or

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; or

(c) leased or to be leased by a state agency; or

(d) constructed, owned, or operated by the Montana electric and gas authority provided in [section 3].

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-801."

{ Internal References to 18-2-101:

17-5-801 18-2-201 18-2-201 18-2-302

18-2-303 18-2-303 18-2-306 18-2-306
20-15-403 22-3-1003 60-2-112} "

14. Page 19, line 13.

Insert: "Section 30. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted ~~thereunder~~ under that chapter to do business in Montana.

(3) "Electric facilities provider" means any utility that provides electric service facilities to the public.

(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public.

(6) "Line" means any electric supply conductor.

(7) "Premises" means a building, residence, structure, or facility to which electric service facilities are provided or are to be installed; however, two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, or facility, other than a trailer court, may not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, or facility.

(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, ~~or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or the Montana electric and gas authority provided for in [section 3].~~ "

{ Internal References to 69-5-102:

69-8-201x} "

Insert: "Section 31. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy

as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider of a utility that has restructured in accordance with this chapter.

(9) "Default supply service" means the provision of electricity supply by a default supplier.

(10) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(11) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(12) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(13) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

- (a) capacity costs;
- (b) energy costs;
- (c) fuel costs;
- (d) ancillary service costs;
- (e) demand-side management and energy efficiency costs;
- (f) transmission costs, including congestion and losses;

- (g) billing costs;
- (h) planning and administrative costs; and
- (i) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

(14) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(15) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

- (i) distribution;
- (ii) connection;
- (iii) disconnection; and
- (iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(16) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(17) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(18) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(19) "Local governing body" means a local board of trustees of a rural electric cooperative.

(20) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(21) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(22) "Net metering system" means a facility for the production of electrical energy that:

- (a) uses as its fuel solar, wind, or hydropower;
- (b) has a generating capacity of not more than 50

kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(23) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(24) "Pilot program" means an experimental program using a select set of small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future.

(25) "Public utility" means, except for the Montana electric and gas authority established in [section 3], any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(26) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(27) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.

(28) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

(29) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(30) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(31) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(32) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(33) "Transition period" means the period ending July 1, 2027.

(34) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(35) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(36) "Transmission services provider" means an entity controlling or operating transmission facilities.

(37) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(38) "Universal system benefits programs" means public purpose programs for:

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

(39) "Utility" means any public utility or cooperative utility."

{ Internal References to 69-8-103:

15-32-402 x 15-72-103 x 15-72-104x 35-19-102x
69-3-1403 x 75-25-101x }

Renumber: subsequent sections

- END -